

MINNESOTA RULES OF GUARDIAN AD LITEM PROCEDURE IN
JUVENILE AND FAMILY COURT

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RULE 901. SCOPE OF RULES; IMPLEMENTATION

Rule 901.01. Scope of Rules

These Rules govern the appointment, responsibilities, and removal of guardians ad litem appointed to advocate for the best interests of the child, minor parent, or incompetent adult in family and juvenile court cases. These Rules do not govern guardians ad litem appointed pursuant to Minn. Stat. sections 245.487-245.4888, 253B, 256B.77, 257.60(1), 494.01-494.05, 501B.19, 501B.50, 508.18, 524.1-403, 540.08, and when the person appointed as a guardian ad litem for a minor parent in a paternity action pursuant to Minnesota Rules of Civil Procedure 17.02 is the minor parent's parent or adult relative.

For purposes of Rules 902 to 907:

(a) The phrase "family court case" refers to the types of proceedings set forth in the Comment to Rule 301 of the Minnesota Rules of Family Court Procedure, including, but not limited to, marriage dissolution, legal separation, and annulment proceedings; child custody enforcement proceedings; domestic abuse and harassment proceedings; support enforcement proceedings; contempt actions in family court; parentage determination proceedings; and other proceedings that may be heard or treated as family court matters.

(b) The phrase "juvenile court case" refers to the child protection matters set forth in Rule 2.01(k) of the Minnesota Rules of Juvenile Protection Procedure, including all of the following matters: child in need of protection or services, neglected and in foster care, termination of parental rights, review of out of home placement, and other matters that may be heard or treated as child protection matters; guardianship and adoption proceedings. The phrase "juvenile court case" also refers to the juvenile delinquency proceedings set forth in Rule 1.01 of the Minnesota Rules of Juvenile Procedure.

2004 Advisory Committee Comment

The previous Rules of Guardian Ad Litem Procedure also addressed the qualifications, recruitment, screening, training, selection, supervision, and evaluation of guardians ad litem. The administration and oversight of these issues is now the responsibility of the Office of the State Court Administrator. The issues are now to be included in a standards manual. It is the responsibility of the Office of the State Court Administrator to prepare that manual, with the advice and consent of the Conference of Chief Judges. The minimum standards set forth in the previous rules are to be maintained in the manual, together with the procedures governing complaints about the performance of a guardian ad litem. Also to be included in the manual are standards regarding knowledge and appreciation of the prevailing social and cultural standards of the Indian and other minority communities. The manual is to be published in both print and electronic forms and is to be available to the public.

Rule 901.02. Implementation

The chief judge of the judicial district shall be responsible for insuring the implementation of the Rules of Guardian ad Litem of Procedure in Juvenile and Family Court. The responsibilities set forth in the Rules of Guardian ad Litem of Procedure in Juvenile and Family Court shall be carried out in each judicial district at the direction of the judicial district administrator.

RULE 902. MINIMUM QUALIFICATIONS

Before a person may be recommended for service as a guardian ad litem pursuant to Rule 903, the person must satisfy the following minimum qualifications:

- (a) have an abiding interest in children and their rights and needs;
- (b) have sufficient listening, speaking, and writing skills in the person's primary language to successfully conduct interviews, prepare written reports, and make oral presentations;
- (c) not have been involved in any conduct or activity that would interfere with the person's ability to discharge the duties assigned by the court;
- (d) have knowledge and an appreciation of the ethnic, cultural, and socio-economic backgrounds of the population to be served;
- (e) be available for at least 18 months and have sufficient time, including evenings and weekends, to gather information, make court appearances, and otherwise discharge the duties assigned by the court;
- (f) have the ability to (1) relate to a child, family members, and professionals in a careful and confidential manner; (2) exercise sound judgment and good common sense; and (3) successfully discharge the duties assigned by the court;
- (g) not have been removed from a panel of approved guardians ad litem following an unsatisfactory performance evaluation; and
- (h) have satisfactorily completed the pre-service training requirements and demonstrated a comprehension of the responsibilities of guardians ad litem as set forth in Rule 905.

Additional qualifications for a guardian ad litem appointed pursuant to these Rules may be established by the Office of the State Court Administrator, with the advice and consent of the Conference of Chief Judges. Any additional qualifications shall be published in a standards manual. The standards manual shall be published in print and electronic forms and be available to the public.

RULE 903. APPOINTMENT OF GUARDIAN AD LITEM

Rule 903.01. Order by Court; Recommendation of Guardian Ad Litem for Appointment

When the court orders the appointment of a guardian ad litem in a particular case, the district guardian ad litem manager or the manager's designee shall promptly recommend a guardian ad litem for appointment. If in the exercise of judicial discretion the court determines that the guardian ad litem recommended is not appropriate for appointment, and communicates the reasons for that determination to the district guardian ad litem manager or the manager's designee, the district guardian ad litem manager or the manager's designee shall promptly recommend another guardian ad litem for appointment. No guardian ad litem shall be appointed unless recommended by the district guardian ad litem manager or manager's designee.

Rule 903.02. Juvenile Court Appointment

A guardian ad litem shall not be appointed or serve except upon written order of the court. The order shall set forth:

- (a) the statute or rule providing for the appointment of the guardian ad litem;
- (b) the provisions for parental fee collection as applicable under Minn. Stat. sections 260B.331 subd. 6 (a) and 260C.331 subd. 6 (a) and as established by the Conference of Chief Judges, and
- (c) in an adoption proceeding or a juvenile court case in which adoption is the intended permanency plan for the child, authorization for the guardian to review the home studies.

When a guardian ad litem is appointed pursuant to Minn. Stat. section 260C.163 subd. 5 (a), the court shall not appoint as guardian ad litem an individual who is the party, or an agent of the party, who has already filed a petition in the case pursuant to Minn. Stat. section 260C.141.

2004 Advisory Committee Comment

Rule 903.02 prohibits appointment as a guardian ad litem in a juvenile court case any individual, or the individual's agent, who has filed the initial petition in the case. The Rule is also intended to prohibit an individual serving as a guardian ad litem in both a family court matter and a juvenile court matter involving the same child, if the family court guardian ad litem has filed the initial petition in the juvenile court matter. The Rule does not prohibit a guardian ad litem already serving in a juvenile court matter from continuing to serve if, in the course of the case, the guardian ad litem files a petition or other pleadings.

Rule 903.03. Family Court Appointment

A guardian ad litem shall not be appointed or serve except upon written order of the court. The order shall set forth:

- (a) the statute or rule providing for the appointment of the guardian ad litem;
- (b) the specific duties to be performed by the guardian ad litem in the case;
- (c) to the extent appropriate, deadlines for the completion of the duties set forth;
- (d) to the extent appropriate; the duration of the appointment; and
- (e) the provisions for parental fee collection as applicable under Minn. Stat. sections 257.69 subd. 2 (a) and 518.165 subd. 3 (a), and as established by the Conference of Chief Judges.

Rule 903.04. Other Roles Precluded

A guardian ad litem under the supervision of the Office of the State Court Administrator shall not be ordered to, and shall not perform the following roles in a case in which they serve as a guardian ad litem:

- (a) custody evaluator pursuant to Minn. Stat. section 518.167; or
- (b) parenting time evaluator; or
- (c) mediator, as that role is prescribed in Minn. Stat. section 518.619 and Rule 310 of the Minnesota Rules of Family Court Procedure; or
- (d) arbitrator or individual authorized to decide disputes between parties; or
- (e) parenting time expeditor, as that role is prescribed in Minn. Stat. sections 518.619 and 518.1751; or
- (f) substitute decision-maker under Minn. Stat. section 253B.092; or

(g) evaluator charged with conducting a home study under Minn. Stat. sections 245A.035 or 259.41; or

(h) attorney for the child.

Nothing in this rule shall prevent a properly qualified person who also serves in other cases as a guardian ad litem from serving in the above roles on a privately-paid basis.

RULE 904. COMPLAINT PROCEDURE; REMOVAL OR SUSPENSION OF GUARDIAN AD LITEM FROM PARTICULAR CASE

Rule 904.01. Complaint Procedure

Complaints about the performance of a guardian ad litem shall be governed by procedures established by the Office of the State Court Administrator with the advice and consent of the Conference of Chief Judges. Unless offered into evidence by the guardian ad litem or authorized by written order following an in camera review by the court, the complaints and complaint investigation reports shall not be received as evidence or used in any manner in any proceeding governed by these Rules.

Rule 904.02. Removal or Suspension of Guardian Ad Litem From Particular Case

Subd. 1. A guardian ad litem appointed to serve in a particular case may be removed or suspended from the case only by order of the presiding judge. Removal or suspension may be upon initiation of the presiding judge or after hearing upon the motion of a party pursuant to subd. 2 of this Rule.

Subd. 2. A party to the case who wishes to seek the removal or suspension of a guardian ad litem for cause must proceed by written motion before the judge presiding over the case. A motion to remove or suspend a guardian ad litem for cause shall be served upon the parties and the guardian ad litem and filed and supported in compliance with the applicable rules of court. At the time the motion is served, a copy of the motion and all supporting documents shall be provided to the district guardian ad litem manager by the party making the motion.

Subd. 3. The presiding judge shall remove a guardian ad litem from a particular case:

(a) when it is shown by written communication from the district guardian ad litem manager or the manager's designee that the individual is a contract guardian ad litem who does not have a current contract with the state of Minnesota, or the guardian ad litem has been removed from the state program for cause; or

(b) upon notice of any felony, gross misdemeanor, or misdemeanor conviction of the guardian ad litem of an offense involving children or domestic assault; or

(c) upon notice of a finding by the Minnesota Department of Human Services of maltreatment of a child by the guardian ad litem.

Subd. 4. The presiding judge may remove or suspend a guardian ad litem from a particular case:

(a) for failure to comply with a directive of the court, including provisions of the order appointing the guardian ad litem; or

(b) for failure to comply with the responsibilities set forth in these Rules; or

(c) upon notice of formal sanction of the guardian ad litem by any professional or occupational licensing board; or

(d) upon formal request from the district guardian ad litem program for good cause; or

(e) for other good cause shown.

As an alternative to removal or suspension from a specific case, the presiding judge may

ask the district guardian ad litem manager to provide appropriate remedial action for the guardian ad litem.

RULE 905. GENERAL RESPONSIBILITIES OF GUARDIANS AD LITEM

In every family court and juvenile court case in which a guardian ad litem is appointed and in every paternity action in which a guardian ad litem has been appointed for a child who has been made a party pursuant to Minn. Stat. sections 257.60 (2) and (3), the guardian ad litem shall:

(a) conduct an independent investigation to determine the facts relevant to the situation of the child or incompetent adult and the family, which must include, unless specifically excluded by the court: reviewing relevant documents, which in the case of an adoption shall include the home studies upon order of the court pursuant to Minn. Stat. section 259.53 subd. 3(b); meeting with and observing the child in the home setting and considering the child's or incompetent adult's wishes, as appropriate; and interviewing parents, caregivers, and others relevant to the case;

(b) advocate for the best interests of the child or incompetent adult by participating in appropriate aspects of the case and advocating for appropriate community services when necessary;

(c) maintain the confidentiality of information related to a case, with the exception of sharing information as permitted by law to promote cooperative solutions that are in the best interests of the child or incompetent adult;

(d) monitor the best interests of the child or incompetent adult throughout the judicial proceeding; and

(e) present written reports on the best interests of the child or incompetent adult that include conclusions and recommendations, and the facts upon which they are based.

RULE 906. EX PARTE CONTACT PROHIBITED

Ex parte communication with the court by a guardian ad litem is prohibited, except as to procedural matters not affecting the merits of the case.

RULE 907. RIGHTS OF GUARDIANS AD LITEM

Rule 907.01. Rights in Every Case

In every case in which a guardian ad litem is appointed pursuant to Rule 903, the guardian ad litem shall have the rights set forth in clauses (a) to (d).

(a) The guardian ad litem shall have access to the child or incompetent adult including meeting with the child alone as deemed appropriate by the guardian ad litem; and shall have access to all information relevant to the child's or incompetent adult's and family's situation which is accessible under applicable state and federal laws.

(b) The guardian ad litem shall be furnished copies of all pleadings, documents, and reports by the party which served or submitted them. A party submitting, providing, or serving pleadings, documents, or reports shall simultaneously provide copies to the guardian ad litem.

(c) The guardian ad litem shall be notified of all court hearings, administrative reviews, staffings, investigations, dispositions, and other proceedings concerning the case. Timely notice of all court hearings, administrative reviews, staffings, investigations, dispositions, and other proceedings concerning the case shall be provided to the guardian ad litem by the party scheduling the proceeding.

(d) The guardian ad litem shall have the right to participate in all proceedings through submission of written and oral reports, and may initiate and respond to motions.

Rule 907.02. Rights as a Party

In addition to the rights set forth in Rule 907.01 and any other rights set forth in statute, court order, or Rule, in every case in which a guardian ad litem is a party, the guardian ad litem shall have the right to:

- (a) legal representation;
- (b) be present at all hearings;
- (c) conduct discovery;
- (d) bring motions before the court;
- (e) participate in settlement agreements;
- (f) subpoena witnesses;
- (g) make argument in support of or against the petition;
- (h) present evidence;
- (i) cross-examine witnesses;
- (j) request review of the referee's findings and recommended order;
- (k) request review of the court's disposition upon a showing of a substantial change of circumstances or that the previous disposition was inappropriate;
- (l) bring post-trial motions; and
- (m) appeal from orders of the court.

The exercise of these rights shall not constitute the unauthorized practice of law.